



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

08/734,443 10/17/96 KEYT

B A-63096/WHD

EXAMINER

HM12/0402

FLEHR HOHBACH TEST
ALBRITTON & HERBERT
SUITE 3400 FOUR EMBARCADERO STREET
SAN FRANCISCO CA 94111

SAOUD, C	
ART UNIT	PAPER NUMBER

1646
DATE MAILED:

04/02/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/734,443

Applicant(s)

Key et al.

Examiner

SAOUD

Group Art Unit

1646

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 19 Feb. 1999
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-15 is/are pending in the application.
- Of the above claim(s) 15 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-14 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Art Unit: 1646

DETAILED ACTION

Continued Prosecution Application

1. The request filed on 19 February 1999 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/734,443 is acceptable and a CPA has been established. An action on the CPA follows.

All supplemental arguments regarding the rejections of record which were raised in the after final submission of 28 September 1998 were addressed in the advisory action of 16 October 1998. The request for a CPA did not include any new amendments or arguments.

Election/Restriction

2. Claim 15 remains withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected invention. Election was made **without** traverse in Paper No. 5.

Claim Rejections - 35 USC § 102

3. Claims 1-2, 10-13 and 14 stand rejected under 35 U.S.C. 102(b) as being anticipated by Claffey et al. (Biochim. Biophys. Acta. 1246(1): 1-9, 1995) for the reasons of record in paper #5.
4. Claims 1-3, 10-12, and 14 stand rejected under 35 U.S.C. 102(b) as being anticipated by Potgens et al. (J. Biol. Chem. 269(52): 32879-32885, 1994) for the reasons of record in paper #5.

Art Unit: 1646

5. Claim 13 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Potgens et al. as applied to claims 1-3, 10-12, and 14 for the reasons of record in paper #5.

Claim Rejections - 35 USC § 103

6. Claims 4-6 and 9 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Potgens et al. as applied to claims 1-3, 10-12, and 14 for the reasons of record in paper #5.
7. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Potgens et al. as applied to claims 1-3, 10-12, and 14 in view of Pang (U.S. Pat. No. 5,418,135) for the reasons of record in paper #5.

Conclusion

8. No claim is allowed.
9. This is a CPA of applicant's earlier Application No. 08/734,443. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1646

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine Saoud, Ph.D., whose telephone number is (703) 305-7519. The examiner can normally be reached on Monday to Friday from 8AM to 3PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lila Feisee, can be reached on (703) 308-2731. The fax phone number for this Group is (703) 308-0294.

Official papers filed by fax should be directed to (703) 308-4227. Faxed draft or informal communications with the examiner should be directed to (703) 308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Christine Saoud, Ph.D.
March 30, 1999




JOHN ULM
PRIMARY EXAMINER
GROUP 1800